93-556

Supreme Court, U.S.
FILED
SEP 23 1993
OFFICE OF THE CLERK

No.

In The

Supreme Court of the United States

October Term, 1993

SAY & SAY, ET AL.,

Petitioners,

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, ET AL.,

Respondents,

A. Castellano, et al.,

Real Party In Interest.

Petition for Writ of Certiorari to the Supreme Court of the State of California

PETITION FOR WRIT OF CERTIORARI

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THE QUESTION PRESENTED FOR REVIEW

Whether the body attachments without bail issued for an alleged contempt are illegal and unconstitutional? Whether the California courts acted beyond the U.S. Constitution in determining this case and whether federal review is necessary?

ALL PARTIES TO THE PROCEEDING

PLAINTIFFS AND PETITIONERS:

Say & Say, L. Shieh.

RESPONDENTS:

Superior Court of the State of California for the County of Los Angeles and Orange County.

DEFENDANTS AND REAL PARTIES IN INTEREST:

Andrew Castellano; Gary Hollingsworth; Francisca Araiza; O'Melveny & Myers; Michael Newman; et al.

TABLE OF CONTENTS

	Page
I. Opinion below	2
II. Jurisdiction	3
III. Federal Law Involved	4
IV. Statement of Case	4
V. Reasons for Granting Writ	14
A. Body Attachments Issued In the Present Case Are Unconstitutional Because It Failed to Meet The Requirement of Due Process of Law	14
B. The Warrant Was Not "Objectively Reasonable" Because It Created Unnecessary Danger of An Unlawful Arrest	26
C. The Case Had Been Stayed Entirely, The Ordered Appearance Is Confusing As To The Purpose, Thus Violating Due Process of Law	27

VI. CONCLUSION 28

Appendix:

(1) Judgment of the Supreme Court of California, July 26, 1993 30

(2) Judgment of the Court of Appeal of California, July 15, 1993 33

(3) Reporter's Transcript on Appeal of Superior Court of California, County of Los Angeles 34

(4) Gibson, Dunn & Crutcher's Order to Show Cause Re Contempt on May 27, 1993 39

(5) Minute Order of Order to Show Cause on June 28, 1992, in Superior Court of California, County of Los Angeles re L. Shieh v. Warren Christopher 45

(6) Minute Order of Order to Show Cause on June 28, 1992, in Superior Court of California, County of Los Angeles re L. Shieh v. Andrew Castellano 48

(7) Minute Order of Motion for Orders Requiring Security to Determine If Plaintiff Has Posted Bonds or dismiss action on June 3, 1993 of L. Shieh v. Warren Christopher 51

(8) Minute Order of Motion of Plaintiff, Liang-Houh Shieh for Reconsideration of Order Granting Vexatious Litigant denied on May 24, 1993 of Say & Say v. Andrew Castellano 58

(9) Minute Order of Motion of Plaintiff, Liang-Houh Shieh for Reconsideration of Order Granting Vexatious Litigant denied on May 24, 1993 of L. Shieh v. Warren Christopher 62

(10) Minute Order of Motion of Defendant, Ivy Yuan Pursuant to CCP Section 391.1 for an Order Requiring Plaintifs to Furnish Security As a Vexatious Litigant granted on April 22, 1993 of Say & Say v. Andrew Castellano 65

(11) Minute Order of Motion of Defendants to Quash Notice of Deposition and for A protective Order and Request for Sanctions on April 22, ..1993 of L. Shieh v. Warren Christopher 68

(12) Substition of Attorney on October 20, 1992 of L. Shieh v. Warren Christopher 71

(13) Substition of Attorney on October 20, 1992 of Say & Say v. Andrew Castellano 77

(14) Notice of Motion for Leave to File Second Amended Complaint; Points and Authorities and Declaration of James L. Andion of L. Shieh v. Warren Christopher of Superior Court of California, County of Los Angeles on May 24, 1993 83

TABLE OF CASES

Page

Allison v. County of Ventura
68 Cal. App. 3d 689, 703(1977) 16

Bradley v. Superior court
48 Cal. 2d 509 (1957) 24

Conn v. Superior Court
196 Cal App. 3d 774 (1987) 17

Edward Malley and Rhode Island v.
James R. Briggs and Louisa Briggs
106 S. Ct. 1092 (1986) 26

People v. Superior court
239 Cal. App. 2d 99 (1965) 21

Pousson v. Superior Court
165 Cal. App. 2d (1958) 23

Silvagni v. Superior Court
of Los Angeles
157 Cal. App. 2d 287(1958) 6

STATUTES

28 U.S.C. §1257(a) 3

28 U.S.C. §1651(a) 3

28 U.S.C. §1983 27

California Code of Civil Procedure,
§ 1209 to 1222 15

California Code of Civil Procedure,
§ 1209 to 1223 16

California Code of Civil Procedure,
§1212 15

RULES

U.S. Supreme Court Rules, Rule 10.1(c) 3,28

IN THE SUPREME COURT OF

THE UNITED STATES

October Term, 1993

Say & Say, et al., Petitioners,

v.

County of Los Angeles Superior Court of the State of California, and County of Orange, Respondents,

A. Castellano, et al., Real Parties in Interest.

To the Honorable William Rehnquist, the Chief Justice, and associate Justices of the Supreme Court of the United States.

Say and Say and L. Shieh, the Petitioners herein, pray that a writ of certiorari be issued to review the judgment of the Supreme Court of the State of California entered in the above-entitled case on July 26, 1993.

I. OPINION BELOW

The opinion of the Supreme Court of California dated July 26, 1993, which denied the petition for review is unreported and is attached in petitioners' Appendix, page 27. The judgment of the Court of Appeal dated July 15, 1993, which denied the petitioners' petition for writ of mandate is attached at page 28. The Order of the Superior Court of the Los

Angeles County dated June 28, 1993 which among other things issued an attachment for Defaulter with no bail is attached at page 42.

II. JURISDICTION

The judgment of the Supreme Court of California was entered on July 26, 1993, which denied petitioners' petition for review in a case involving constitutional issues. Under 28 U.S.C. §1257(a), 28 U.S.C.§1651(a) and the Supreme Court Rule 10.1(c), this Court will review a state judgment by writ of certiorari, if "a state Court... has decided an important question of federal law which has not been, but should be, settled by this court, or has decided a federal question in a way that conflicts

with applicable decisions of this court."

III. FEDERAL LAW INVOLVED

The state court's order of Attachment for defaulter without justifiable ground as to petitioner Shieh with no bail in the present case is unconstitutional. It should have been reversed by the state reviewing courts. By denying to hear petitioner's case, the state reviewing courts failed to enforce the 4th , 5th and 14th amendments to the U.S. Constitution. Petitioners' right to due process and equal protection are violated.

IV. STATEMENT OF CASE

On May 24, 1993, Judge Kakita ordered L. Shieh to appear "a[t] [sic] attorney of record" in Castellano case and Christopher case. See Appendix, at page 51 and 55. However the order in the formal version dated May 27, 1993 mentioned plaintiff Shieh "failed to appear". On June 28, 1993, in Say & Say v. Andrew Castellano, et al., Case No. BC 059833 ("Castellano Case") and L. Shieh v. O'Melveny & Myers, et al., Case No. BC 054981 ("OMM Case"), Judge Kakita of the Superior Court issued a minute order which, among other things, contained an Attachment for Defaulter as to Mr. Shieh with no bail.

To determine whether the Court

ordered appearance is valid and therefore Mr. Shieh must obey, we should examine in which capacity Mr. Shieh was ordered to appear. According to the general practice in California, a person ordered as a witness to appear should obey the order, non-compliance constitutes contempt. However when a party is ordered to appear to show cause, he may have his counsel to appear on behalf of the party. Silvagni v. Superior Court of Los Angeles, 157 Cal. App. 2d 287(1958).

Petitioner Mr. Shieh was not ordered as a witness to testify in this case. It is unclear that whether he was ordered as an attorney of record or a party to make such appearance. In the Court's official reporter's transcript

on appeal dated June 28, 1993. The court mentioned it "had ordered him(Mr. Shieh) to be here as a plaintiff". Apply the holding in Silvagni in this case, Mr. Shieh does not have to appear himself if he is ordered to show cause, as long as his counsel appears for him. Thus the ordered appearance may compell Mr. Shieh's appearance only if he is counsel. The fact is however at the time when the order was entered, he was not the attorney of record in the cases. Mr. Shieh was not the attorney of record since attorney Lucien Schmit represented him on or about June 28, 1992, about one year ago before the June 28, 1993 minute order was entered. In order to clarify the confusion created by defendants, attorney Schmit and Mr. Shieh signed the substitution of attorney again on or

about October 22, 1992. See Appendix Substitution of Attorney, at page 62 and 68, which was filed on or about the same date with the trial court.

Mr. Shieh is represented in both cases by at least two law firms. He does not have to make appearances himself. The court may compel a person to testify by issuing and serving a subpoena upon the person, but it is not the case here. The order was issued based on the intentional deceit and collusion, in violation of the California Business and professional Code §6128, et seq, by defendants that Mr. Shieh is an attorney of record while he is not. Thus the orders are void on their face for failing to provide any proper reason or justifiable ground to

compel Mr. Shieh's appearance, particularly after his attorneys explained the situation to the court.

Further, the order is not supported by evidence that such appearance be necessary. The entire action was stayed in or about August, 1992, and no discovery was allowed since that time per defendants. Both cases were dismissed by Judge Kakita on June 3, 1993 and appeals were filed on or about June 8, 1993. On April 22, 1993, the hearings sequences were: OMM case, Fulbright & Jaworski v. Shieh, et al ("FJ case") and Castellano case. In OMM case, Defendant Highberger, without a noticed motion, orally requested the trial court order Mr. Shieh's appearance. The trial court denied such

request and ordered defendant Highberger to give notice. Defendant Tarlow, a co-defendant in OMM case, left the court room. The court commenced the hearing in FJ case. When FJ case was over, the trial court commenced the Castellano case. When that hearing was over, defendant Highberger suddenly spoke to Judge Kakita, from the audience seats, without Mr. Shieh's lawyers' prior knowledge and consent. The trial court then ordered Mr. Shieh to appear on May 24, 1993 in OMM case, but not in Castellano case, based on defendant Highberger's oral, ex parte request, without Mr. Shieh's lawyer's consent.

As of May 24, 1993, the trial court and defendants did not recognize the Law Office of James L. Andion as Mr.

Shieh's attorneys in OMM case and Castellano case. The Law Office of Richard Hopkins' contractual relationship expired on April 30, 1993. The only attorney of record recognized by the trial court and defendants was the Law Office of Guy Rollins. But Attorney Guy Rollins was controlled by defendant Highberger, and did not show up on May 24, 1993.

On April 22, 1993, the trial court may have some questions about Attorney Rollins. The trial Court refused to order Attorney Rollins' appearance but ordered his client's appearance. Because the trial court did not order Mr. Shieh to appear on May 24, 1993 for Castellano case, no defendant in Castellano case has ever given notice to

Mr. Shieh's lawyer concerning Mr. Shieh's appearance. The body attachment issued by the trial court in Castellano case is absolutely without any factual and legal basis.

Petitioners contend that Judge Kakita had automatically disqualified himself as a matter of law for failure to answer the disqualification within the ten day period. This question is now pending in this court for review. (Say & Say, et al v. Los Angeles Superior Court, et al., real parties in interest, A. Castellano, et al, 93-295). Judge Kakita's rulings on April 22, 1993 on the cases are not valid. Also, assuming Judge Kakita could still rule on the cases, the order is contradictory to the stay ordered by himself

previously. The cases are stayed at the time the appearance was ordered, if Mr. Shieh appears he would violate the order of stay.

Based on the reasons stated above, Petitioners' lawyers filed opposition to the appearance order, before the May 24, 1993 hearing. Petitioner's lawyers further requested the trial court to appoint a criminal lawyer to defend petitioner Shieh and to subpena the witnesses pursuant to the trial court's two orders. The trial court refused to honor its own orders to appoint a criminal lawyer for Mr. Shieh and to subpoena the witnesses, instead issued body attachments without bail against petitioner Shieh on both cases. Petitioners then filed petitions for

writ of mandate with the Court of Appeal, Division One, but the petition was denied by Division One. Petitioners also petitioned to the California Supreme Court to review this matter. The petition was denied.

V. REASONS FOR GRANTING WRIT

A. Body Attachment Issued In the Present Case Are Unconstitutional Because It Failed to Meet The Requirement of Due Process of Law.

1. Body Attachments Must Meet the Constitutional Requirements To Be Enforceable

The authority to imprison a person

who violates a court order exists under the contempt power. Cal. Code Civ. Proc. §§ 1209 to 1222. There are two statutory sources under California law for issuance of a civil arrest warrant, i.e. a body attachment. A bench warrant is issued for attachment or arrest of a person to compel his attendance before the court to answer to a charge of contempt pursuant to Cal. Code Civ. Proc. §1212, or for the failure of a witness to attend in response to a subpoena which has been duly served pursuant to Cal. Code Civ. Proc. §1993.

A Warrant directing a body attachment must specify the nature of the contempt and the issuing court or judge must specify, by an endorsement on the warrant, the amount of bail. Cal.

Code Civ. Proc. §§1209-1223.

A trial court in the State of California may not cause the arrest of a person in a civil case by the issuance of a defective warrant of arrest which does not set bail or specify the cause of or basis of arrest. Allison v. County of Ventura, 68 Cal. App. 3d 689, 703. (1977). In the present case, "[t]he real problem with the warrant in question is what appeared upon its face as the reason for plaintiff's arrest." Allison v. County of Ventura, 68 Cal. App. 3d 689, 700 (1977). Excessive bail is the same as no bail. People v. Remijio, 259 CA 2d 12, 66 CR 91 (2nd Dist. 1968)

The various orders are

contractitory to each other on the issue that in which capacity Mr. Shieh was ordered to appear. Thus the ordered appearance should not be enforced for the defect appearing on the face of those orders. See Statement of the Case, at page 5-14. Because non appearance is justified and explained timely, any punishment for such non appearance is improper, and a body attachment is without a valid legal ground.

2. The Body Attachment Issued in The Present Case Is Defective and unconstitutional

Mr. Shieh has a valid defense as to the allegation of contempt. In Conn v. Sup. Ct., 196 Cal App. 3d 774 (1987),

four elements have been raised as required conditions in a prima facie contempt case: (1) The rendition of a valid order; (2) Respondent's actual knowledge of the order; (3) Respondent's ability to comply with the order; and (4) Respondent's willful disobedience of the order. As a matter of law, if one of the elements is not present, or the application for issuance of the OSC fails to contain one of the elements, the party being charged with contempt may have a defense to the allegation.

In the present case, as mentioned above, the order allegedly disobeyed by Mr. Shieh is not a valid order. Further, Mr. Shieh was ordered to appear either as an attorney of record or as a party, but not as a witness.

Consequently, the Court's body attachment is not proper under California law. In California, a body attachment may issue to compel attendance of a subpoenaed witness who does not appear. Allison v. County of Ventura, 68 Cal. App. 3d 689 (1977). Because Mr. Shieh was not subpoenaed as a witness, thus the attachment was improper and groundless under the circumstances. If the court wanted to have more information, it could be obtained from petitioners' Attorney Guy Rollins if the court needs an explanation as to any issues regarding the case. Mr. Shieh is not in the position to explain what his Attorney Rollins has done.

Further, because Mr. Shieh is not

an attorney of record if the orders required his appearance as a counsel, it is not enforceable. Petitioners had made effort to explain to the Court about the misunderstanding upon which the order was issued. On June 23, 1993, petitioners submitted opposition papers regarding the order to show cause re contempt. However, the Court did not reconsider the order which sought to compel Mr. Shieh's appearance, did not modify the order as to the reason for ordering appearance, thus Mr. Shieh's nonappearance is explainable and cannot be held in contempt.

In a contempt proceeding, the applicant must prove that the citee had actual knowledge of the order. In the present case, Mr. Shieh has another

defense for non appearance. He had lack of knowledge of the order because it was not served upon Mr. Shieh. In Castellano case, the trial court did not order Mr. Shieh's appearance and defendants did not give Mr. Shieh and his lawyer notice. Neither Mr. Shieh, nor Mr. Shieh's lawyer has any notice. Thus, there is no presumption that he had personal knowledge. People v. Sup. Ct., 239 Cal. App. 2d 99 (1965).

Mr. Shieh had no ability to comply even if he had the actual knowledge of the order. As a formal counsel, for Say & Say, a California corporation, he owes a fiduciary duty to his client Say & Say. This duty requires him not to reveal attorney-client privilege protected information. An order

requiring counsel to breach his fiduciary duty makes counsel unable to obey. Thus, Mr. Shieh's non-compliance, if any, is required by the rules of professional responsibility. On the other hand, Mr. Shieh is a party represented by at least two lawyers. As a party, he is the holder of the attorney-client priviledge and he shall not be compelled to reveal such attorney-client priviledge.

The order on which the contempt charge is based in the present case also required Mr. Shieh to produce strictly confidential and privileged agreements between Say & Say and Say & Say's attorneys. Mr. Shieh is not a custodian of record for Say & Say, thus he was unable to comply.

Under circumstances stated above, Mr. Shieh did not willfully disobey the order. If there is any non-compliance, it could be justified under the law and facts. Therefore, it should not trigger any punishment under C.C.P. §1218. Body attachment should not be issued and enforced against Mr. Shieh.

Under California law, unless the citizen is impeding the judicial process, California statutory law has followed the constitutionally expressed reluctance to imprison citizens in connection with civil litigation. This principle is stated in Pousson v. Superior Court, 165 Cal. App. 2d (1958) as follows: "A Court of law has no inherent power to arrest citizens or

place them in jail. The legislature makes the law on that subject within constitutional limits. The jurisdiction of courts in matters of arrest is controlled by the Constitution in the first instance, and the next by statutory authorization." California Supreme Court held in Bradley v. Superior Court, 48 Cal. 2d 509 (1957), "any doubts about its application are to be resolved in favor of the citizen. The state courts did not follow their own law in determining this case and the consequences are severe as to petitioners' freedom and constitutional rights under both U.S. and California constitutions. Petitioners now have no recourse but pray for a writ of certiorari from this highest Court of this country to be issued to the

California Supreme Court to reverse the erroneous and unconstitutional orders."

As Code of Civ Proc. §1213 required, bail must be set upon issuance of a contempt warrant and the amount thereof be set forth on the warrant, as California Constitution Article I Section 12 requires, "a person shall be released on bail by sufficient sureties, except for capital crimes..." An additional requirement for a valid body attachment is setting of bail besides setting the reason for attachment. Allison v. County of Ventura, Id. at 702. Mr. Shieh is not a criminal nor has he committed a capital crime. The warrant with no bail on its face is defective and violated Mr. Shieh's Constitutional right protected by both

the U.S. Constitution and California Constitution. The excessive bail is the same as no bail.

B. The Warrant Was Not "Objectively Reasonable" Because It Created Unnecessary Danger of An Unlawful Arrest

In Edward Malley and Rhode Island v. James R. Briggs and Louisa Briggs, 106 S. Ct. 1092 (1986), Plaintiffs brought a civil right action against a state trooper and the state of Rhode Island, alleging that trooper, in applying for a warrant to arrest them, violated their rights under the Fourth and Fourteenth Amendments. When the case was brought to the U.S. Supreme

Court, certiorari was granted. In that case, this Court discussed a standard of objective reasonableness of a warrant in the context of civil rights cases. Applying such standard to the present case, the warrant was erroneous and misleading. Thus petitioners should have a cause of action against the issuing court for depriving petitioners of their constitutional rights under the Fourth and Fourteenth Amendments and 28 U.S.C. section 1983. Therefore a writ of certiorari should be issued.

C. The Case Had Been Stayed Entirely, The Ordered Appearance Is Confusing As To Its Purpose, Thus Violating Due Process of Law.

The order requiring Mr. Shieh to

make appearance is not a valid order, because it is contradictory to the previous order staying the case entirely. Furthermore, Judge Kakita, who issued these orders in question, is automatically disqualified for failure to answer or strike the request to disqualify him from the present case within ten (10) days. He could not continually rule on the cases. This "automatic disqualification" is now pending in this court. 92-295

VI. CONCLUSION

Petitioners seek a writ of certiorari under the United States Supreme Court Rules, Rule 10.1(c). For the forgoing reasons, this petition for a writ of certiorari should be granted.

Dated: September , 1993.

Respectfully submitted,

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Counsel for Petitioners
Say & Say , L. Shieh

No.

In The

Supreme Court of the United States

October Term, 1993

SAY & SAY, L. SHIEH,
Petitioners,

vs.

SUPERIOR COURT OF THE
STATE OF CALIFORNIA,
COUNTY OF LOS ANGELES
AND ORANGE COUNTY
Respondents.

ANDREW CASTELLANO,
GARY HOLLINGSWORTH,
FRANCISCA ARAIZA,
O'MELVENY & MYERS;
MICHAEL NEWMAN, ET AL.
Real Party In Interest.

Petition for Writ of Certiorari to the Supreme Court of the State of California

PETITION FOR WRIT OF CERTIORARI

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BEST AVAILABLE COPY

No. CA 2/1 B076637-S034026

IN THE SUPREME COURT OF THE

STATE OF CALIFORNIA

IN BANK

A. SHIEH, Petitioner

v.

LOS ANGELES COUNTY

SUPERIOR COURT, Respondent

A. CASTELLANO et al.,

Real parties in Interest

Application for stay and petition for review DENIED.

Lucas
Chief Justice

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA SECOND APPELLATE DISTRICT

DIVISION ONE

L. SHIEH et al.,	)	B076637
	)	
Petitioners,	)	(L.A.S.C. Nos.
	)	BC054981,
v.	)	BC059833)
	)	
THE SUPERIOR COURT	)	(EDWARD Y.
OF THE STATE OF	)	KAKITA, JUDGE)
CALOFIRNIA FOR THE	)	
COUNTY OF LOS ANGELES)		O R D E R
	)	
Respondent,	)	
	)	
A. CASTELLANO et al.,)		
	)	
Real Parties	)	
In Interest	)	
	)	

THE COURT*:

The petition for writ of mandate/ prohibition and request for stay, filed July 7, 1993, has been read and

considered.

The petition is denied.

---

*SPENCER,P.J. ORTEGA,J. VOGEL(Miriam A),J

OFFICE OF THE CLERK

COURT OF APPEAL

STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

JOSEPH A. LANE, CLERK

DIVISION: 1 DATE 07/15/93

Law Offices of
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RE: Shieh, L.
vs.
S.c.l.a.
Castellano, A.
2 Civil BO76637
Los Angeles No. BC059833

SUPERIOR COURT OF THE
STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 14 HON. EDWARD KAKITA, JUDGE

SAY & SAY, L. SHIEH,	)	
PLAINTIFFS-APPELLANTS,	)	NO. BC
VS.	)	059833
ANDREW CASTELLANO, ET AL.,	)	
DEFENDANTS-RESPONDENTS.	)	
	)	
	)	

REPORTER'S TRANSCRIPT ON APPEAL
JUNE 28, 1993

APPEARANCES:

SEE APPEARANCE PAGE.

JACKLYN WYATT, CSR #8339

OFFICIAL REPORTER

(EXTRACTED FROM ITS RELEVANT PART)
SIGNED AND WAS SERVED ON MR. SHIEH'S ATTORNEYS TO APPEAR ON MAY 24TH SIMPLY RECITES IN THE CHRISTOPHER CASE THAT PLAINTIFF, LIANG-HOUH SHIEH, APPEAR IN PERSON, ET CETERA.

HIS STATUS AS COUNSEL OF RECORD WAS NOT CITED AS HAVING RELEVANCE. THE PAPER TRAIL IS SUBJECT TO THE CAVEAT THAT I THINK THE RECORD ALSO SHOWS OF THE FACT THAT MR. SHIEH HAS BEEN ACTING AS CO-COUNSEL.

MR. ANDION: WE OBJECT TO HIS CHARACTERIZATION AS A LEGAL CHARACTERIZATION FOR WHICH COUNSEL IS NOT QUALIFIED TO OPINE AT THIS TIME. WE REGARD IT AS A LEGAL ARGUMENT, AND WE'D LIKE TO MOVE TO STRIKE THAT PORTION OF

THE RECORD.

THE COURT: WE'LL STRIKE IT, MR. ANDION.

MR. ANDION: THANK YOU.

THE COURT: WITH REGARD TO MR. SHIEH, EVIDENTLY, THE COURT HAD ORDERED HIM TO BE HERE AS A PLAINTIFF. HE, NOT HAVING MADE HIS APPEARANCE AND SUBSTITUTED SERVICE HAVING BEEN GIVEN BY MR. HIGHBERGER'S OFFICE.

MR. ANDION: YOUR HONOR, MAY I MAKE A FEW POINTS WITH REGARD TO ARGUMENTS ON BEHALF OF MR. SHIEH?

THE COURT: GO AHEAD.

MR. ANDION: EXCUSE ME FOR INTERRUPTING, BUT I THINK IT'S IMPORTANT THAT THE MATTER IS MENTIONED AND THAT THE RECORD BE PROTECTED.

FIRSTLY, THERE WAS NOT AN EX PARTE APPLICATION. IF THERE WERE ONE IT WAS TAKEN OFF CALENDAR ON OR ABOUT NOVEMBER 17, 1992.

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SUPERIOR COURT OF THE
STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

L. SHIEH Plaintiff, v. WARREN CHRISTOPHER, MICHAEL NEWMAN; O'MELVENY & MYERS; DOUGLAS W. ABENDROTH; WILLIAM G. ADAMS; WALLACE M. ALLAN; KERMIT W. ALMSTEDT; JEAN M. ARNWINE; CHARLES G. BAKALY, JR.; GEORGE M. BARTLETT; BARTON	)CASE NO. BC 054981))[Assigned To Judge)Edward Y. Kakita,)Department 14]))ORDER TO SHOW)CAUSE RE CONTEMPT))Law & Motion) Cutoff: None Set)Discovery Cutoff:) None Set)Trial Date:) None Set)

BEEK; JOHN H.) BEISNER; CHARLES W.) BENDER; BEN E.) BENJAMIN; et al.,)) Defendants.))	
SAY & SAY, L. SHIEH,) Plaintiffs,) v.) ANDREW CASTELLANO,) et al.,) Defendants.))	Case No. BC 059833

WHEREAS, by orders made in open court on November 17, 1992, with plaintiff's counsel present, and reflected in the court's Minute Orders of said date and incorporated into a formal written order filed December 11, 1992, and served on Shieh's counsel of record on December 16, 1992, the court ordered that "This litigation is stayed pursuant to C.C.P. § 391.6 pending the furnishing of... security" by plaintiff

Liang-Houh Shieh, and

WHEREAS, no such security has been furnished by plaintiff to date, and

WHEREAS, on April 22, 1993, in open court with plaintiff's counsel present, the court ordered that plaintiff Liang-Houh Shieh appear in person at the hearing scheduled for May 24, 1993, at 9:00 a.m. in Department 14, which order was reflected in a written Order filed April 29, 1993, and served on Shieh's counsel of record on May 5, 1993, and

WHEREAS, one James L. Andion, purporting to act as attorney for plaintiff L. Shieh, purported to file a Notice of Motion For Leave To File

Second Amended Complaint in Christopher on or about April 27, 1993, and on May 12, 1993, purported to file a Notice Of Motion For Leave To File First Amended Complaint in Castellano, and

WHEREAS, on or about May 4, 1993, Andion purported to file a Motion To Compel Depositions, etc. in Castellano, and

WHEREAS, plaintiff Shieh failed to appear as ordered at the May 24, 1993 hearing, and

WHEREAS, the making of said orders, the filing of said motions and the failure of plaintiff to appear are all matters committed in the immediate view and presence of the court which may

be adjudicated as direct contempts pursuant to C.C.P. § 1211,

IT IS HEREBY ORDERED that plaintiff L. Shieh, his current counsel of record Henry M. "Guy" Rollins, and his purported co-counsel James L. Andion appear on June 28, 1993, at 9:00 a.m. in Department 14 of the Los Angeles Superior Court, 111 North Hill Street, Los Angeles, California 90012 to show cause why they should not be adjudged in contempt of court pursuant to C.C.P. §1209(a)(5), and subject to the penalties provided in C.C.P. § 1218 for the separate contempts committed, to wit, a fine up to $1,000, imprisonment not exceeding five days, or both for each separate act of contempt as well as the separate and additional penalties

provided in C.C.P. § 177.5, to wit, money sanctions not to exceed $1,500 for each violation of a lawful court order.

FURTHER, please be advised that due to the criminal nature of the proceedings, you have the right, inter alia, to the presumption of innocence until proven guilty beyond a reasonable doubt, the right to cross-examine any witnesses, the right to assistance of counsel, including appointed counsel if you cannot afford competent counsel, the right not to testify at all and the right not to incriminate yourself.

Dated: May 27, 1993

Edward Y. Kakita

The Honorable Edward Y. Kakita, Los Angeles Superior Court Judge

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 06/28/93 DEPT 14
HONORABLE EDWARD KAKITA JUDGE
J. BESINAIZ DEPUTY CLERK
HONORABLE JUDGE PRO TEM
ELECTRONIC RECORDING MONITOR
V. GALLUCCI, CSL Deputy Sheriff
J. WYATT Repoter

9:00 am
BC054981 Plaintiff: RICHARD HOPKINS (x)
Counsel: JAMES ANDION (x)
DEFENDANT: WILLIAM HIGHBERGER
Counsel: DONALD MILLER (x)
LUCIEN SCHMITT (X)
DAVID EISEN (X)
L. Shieh vs. Warren Christopher, et al
RELATED TO BC041515
RECUSED: PAUL BOLAND

NATURE OF PROCEEDING:

ORDER TO SHOW CAUSE RE: CONTEMPT AS TO L. AHIEH; ORDER TO SHOW CAUSE REGARDING SANCTIONS AGAINST JAMES ANDION FOR VIOLATING COURT ORDERS; MOTION OF DEFENDANTS, O'MELVENY & MYERS AND

GIBSON, DUNN & CRUTCHER FOR SANCTIONS PURSUANT TO CCP SECTIONS 128.5, 1775. AND 2023(B)(1); MOTION OF ABOVE DEFENDANTS FOR ORDER TO STRIKE OPPOSITION OF PLAINTIFF AND ATTORNEYS TO PENDING SANCTIONS MOTION;

As to the order to show cause as to L. Shieh, the court finds that L. Shieh is not present and therefore issues an Attachment for Defaulter as to L. Shieh, with no bail. Order to show cause is discharged as to Guy Rollins and James Andion.

As to the Order to show cause as to James Andion, the court continued the matter to July 27, 1993, at 9:00 a.m., in this department. Mr. Andion is personally served with order to show

cause papers. No other notice will be given. Court orders that Mr. Andion have his client, L. Shieh, appear on the above date and time.

Motion for sanctions is granted in its entirety.
Motion to strike is denied.

Counsel, Mr. Highberger, is to give notice.

MINUTES ENTERED
06/28/93
COUNTY CLERK

PAGE 1 DEPT. 14

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 06/28/93	DEPT. 14
HONORABLE EDWARD KAKITA	JUDGE
HONORABLE	JUDGE PRO TEM
V. GALLUCCCI, CSL	Deputy Sheriff
J. BESINAIZ	Deputy clerk
ELECTRONIC RECORDING MONITOR	
J. WAYTT	Repoter

9:00 am BC059833

L. Shieh vs. ANDREW CASTELLANO

RELATED TO BC041515

Plaintiff:	JAMES ANDION (X)
Counsel:	DONALD MILLER (X)
	RICHARD HOPKINS (X)
Defendant:	
Counsel:	JOHN HENDRY (X)
	ANDREW CASTELLANO (X)
	LUCIEN SCHMITT (X)

NATURE OF PROCEEDINGS:

ORDER TO SHOW CAUSE RE: CONTEMPT AS TO L. SHIEH; ORDER TO SHOW CAUSE REGARDING SANCTIONS AGAINST JAMES ANDION FOR VIOLATING COURT ORDERS;

As to the Order to show cause as to L. Shieh, the court finds that L. Shieh is not present and therefore issues an Attachment for Defaulter as to L. Shieh, with no bail. Order to show cause is discharged as Guy Rollins and James Andion.

As to the Order to show cause as to James Andion, the court continues the matter to July 27, 1993, at 9:00 a.m., in this department. Mr. Andion is personally served with order to show cause papers. No other notice will be given. Court orders that Mr. Andion have his client, L. Shieh, appear on the above date and time.

Counsel, Mr. Highberger, is to give

notice.

MINUTE ENTERED
06/28/93
COUNTY CLERK

PAGE 1 DEPT. 14

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 06/03/93 DEPT. 14
HONORABLE EDWARD KAKITA
HONORABLE JUDGE PRO TEM
V. GALLUCCI, CSL Deputy Sheriff
J. BESINAIZ Deputy Clerk
ELECTRONIC RECORDING MONITOR
L. COMSTOCK Reporter

9:00 am BC054981
L. Shieh vs Warren Christopher, et al
RELATED TO BC041515
RECUSED: PAUL BOLAND
Plaintiff: RICHARD HOPKINS (X)
Counsel: WILLIAM HIGHBERGER (X)
Defendant: RICHARD TARLOW (X)
Counsel: JEFFREY WEBB (X)
LUCIEN SCHMITT (X)

NATURE OF PROCEEDINGS:

MOTION FOR ORDERS REQUIRING SECURITY TO DETERMINE IF PLAINTIFF HAS POSTED BONDS, OR ALTERNATIVELY, TO DISMISS ACTION; MOTION OF DEFENDANTS, O'MELVENY & MYERS

AND GIBSON, DUNN & CRUTCHER FOR SANCTIONS PURSUANT TO CCP SECTION 128.5, 177.5 AND 2023 (B)(1); MOTION OF DEFENDANTS FOR ORDER TO STRIKE OPPOSITION OF PLAINTIFF AND ATTORNEYS TO PENDING SANCTIONS MOTION; REQUEST OF DEFENDANTS FOR SANCTIONS; REQUEST OF PLAINTIFFS FOR SANCTIONS;

Motion for order requiring security is held. The Court finds that no bonds have been posted and case is now ordered dismissed with prejudice.

Motion for sanctions and Motion to strike opposition are continued to June 28, 1993, at 9:00 a.m., in this department.

Court orders that no papers be filed

prior to the above date except defendants new motion for sanctions and a declaration from Richard Hopkins.

An Order to Show Cause regarding sanctions against James Andion for violating court order regarding the filing of documents is set for June 28, 1993, at 9:00 a.m., in this department.

The Court finds that James Andion is not attorney of record until an Association of Counsel or a Substitution of Attorney is filed.

MINUTES ENTERED
06/03/93
COUNTY CLERK

DEPT 14

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES

DATE: 06/03/93 DEPT. 14
HONORABLE EDWARD KAKITA
HONORABLE JUDGE PRO TEM
V. GALLUCCI, CSL Deputy Sheriff
J. BESINAIZ Deputy Clerk
ELECTRONIC RECORDING MONITOR
L. COMSTOCK Reporter

9:00 am BC054981
L. Shieh vs Warren Christopher, et al
RELATED TO BC041515
RECUSED: PAUL BOLAND
Plaintiff: RICHARD HOPKINS (X)
Counsel: WILLIAM HIGHBERGER (X)
Defendant: RICHARD TARLOW (X)
Counsel: JEFFREY WEBB (X)
LUCIEN SCHMITT (X)

NATURE OF PROCEEDINGS:

MOTION FOR ORDERS REQUIRING SECURITY TO DETERMINE IF PLAINTIFF HAS POSTED BONDS, OR ALTERNATIVELY, TO DISMISS ACTION; MOTION OF DEFENDANTS, O'MELVENY & MYERS AND GIBSON, DUNN & CRUTCHER FOR

SANCTIONS PURSUANT TO CCP SECTION 128.5, 177.5 AND 2023 (B)(1); MOTION OF DEFENDANTS FOR ORDER TO STRIKE OPPOSITION OF PLAINTIFF AND ATTORNEYS TO PENDING SANCTIONS MOTION; REQUEST OF DEFENDANTS FOR SANCTIONS; REQUEST OF PLAINTIFFS FOR SANCTIONS;

Motion for order requiring security is held. The Court finds that no bonds have been posted and case is now ordered dismissed with prejudice.

Motion for sanctions and Motion to strike opposition are continued to June 28, 1993, at 9:00 a.m., in this department.

Court orders that no papers be filed prior to the above date except

defendants new motion for sanctions and a declaration from Richard Hopkins.

An Order to Show Cause regarding sanctions against James Andion for violating court order regarding the filing of documents is set for June 28, 1993, at 9:00 a.m., in this department.

The Court finds that James Andion is not attorney of record until an Association of Counsel or a Substitution of Attorney is filed.

Counsel, Mr. Highberger, is to give notice.

MINUTES ENTERED
06/03/93
COUNTY CLERK

DEPT 14

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Date: May 24, 1993
Honorable EDWARD KAKITA

V. GALLUCCI	Deputy Sheriff
J. BESINAIZ	Deputy Clerk
L. COMSTOCK	Reporter

BC059833
SAY & SAY vs. ANDREW CASTELLANO (X)

Counsel For Plaintiff:	
Counsel For Defendant:	G. Hollingsworth (x)
	John Hendry (x)
	Wesley Rusch (x)
	Mark Kenney (x)

NATURE OF PROCEEDINGS:

MOTION OF PLAINTIFF, LIANG-HOUH SHIEH FOR RECONSIDERATION OF ORDER GRANTING VEXATIOUS LITIGANT

Motion is denied.

MOTION OF PLAINTIFF TO STRIKE AND IN OPPOSITION TO DEFENDANTS' REQUEST FOR JUDICIAL NOTICE (CCP 436)

Motion is denied. Opposition counsels' request for sanctions are denied, except Gary Hollingsworth. Court grants sanctions in the amount of $687.50 against L. Shieh and his attorneys to be paid to Gary Hollingsworth within thirty days.

MOTION OF DEFENDANT, HOUSEHOLD BANK FOR MODIFICATION OF CCP SECTION 391.3 ORDER TO INCLUDE ALL O'MELVENY-RELATED AND GIBSON, DUNN-RELATED DEFENDANTS; MOTION OF DEFENDANT, HOUSEHOLD BANK FOR AN ORDER REQUIRING VEXATIOUS LITIGANT TO POST SECURITY.

Motion is granted. Court orders L. Shieh to post bond of $100,000 as to Household Bank.

MOTION OF PLAINTIFF, SAY & SAY TO COMPEL DEPOSITIONS AND RESPONSES OF ANDREW CASTELLANO, GARY HOLLINGSORTH, IVY YEN, FRANCISCA N. ARAIZA, HOUSEHOLD BANK AND WESLEY RUSCH AND MOTION FOR SANCTIONS AND FOR ORDER TO SHOW CAUSE RE CONTEMPT, ETC. AGAINST DEFENDANTS, ANDREW CASTELLANO, IVY YUEN, GARY HOLLINGSWORTH, FRANCISCA ARAIZA, HOUSEHOLD BANK AND WESLEY RUSCH AND THEIR COUNSEL OF RECORD, MARK KENNEY, AND MARK HOM, JOINTLY AND SEVERALLY, MOTION TO ENTER DEFAULT AGAINST WESLEY RUSCH.

Motion are denied.

The Court sets an order to Show Cause regaridng Contempt as to L. Shieh for filing Motion to Compel, in violation of court ordered stay, and for failure to appear at counsel of record this date, as previously ordered by the court. Order to show cause is set for June 28, 1993, at 9:00 a.m., in this department.

Counsel, Mr. Kenney, is to give notice. Mr. Hollingsworth is to give notice of his award for sanctions.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Date: May 24, 1993
HOnorable EDWARD KAKITA Judge
V. GALLUCCI Deputy Sheriff
J. BESINAIZ Deputy Clerk
L. COMSTOCK Repoter

BC054981
L. SHIEH vs. WARREN CHRISTOPHER, ET AL.
Counsel For
Plaintiff:
Counsel For
Defendant: WILLIAM HIGHBERGER (X)
RICHARD TARLOW (X)
M. KENNEY (X)

NATURE OF PROCEEDINGS:

MOTION OF PLAINTIFF, LIANG-HOUH SHIEH FOR RECONSIDERATION OF ORDER GRANTING VEXATIOUS LITIGANT

Motion is denied.

MOTION OF PLAINTIFF TO STRIKE AND IN

OPPOSITION TO DEFENDANTS' REQUEST FOR JUDICIAL NOTE (CCP SECTION 436)

Motion is denied.

MOTION OF DEFENDANTS FOR MODIFICATION OF CCP SECTION 391.3 ORDER TO INCLUDE ALL O'MELVENY-RELATED AND GIBSON, DUNN-RELATED DEFENDANTS

Motion is granted and includes all defendants in the order.

MOTION OF PLAINTIFFS, SAY & SAY AND L. SHIEH FOR LEAVE TO FILE SECOND AMENDED COMPLAINT

Motion is off calendar due to a prior stay order.

The court sets an Order to Show Cause regarding Contempt as to L. Shieh for filing Motion for Leave, in violation of court ordered stay, and for failure to appear as counsel of record this date, as previously ordered by the court. Order to show cause is set for June 28, 1993, at 9:00 a.m., in this department.

Counsel, Mr. Highberger, is to prepare the order and give notice.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 04/22/93	DEPT. 14
HONORABLE EDWARD KAKITA	JUDGE
V. GALLUCCI	Deputy Sheriff
J. BESINAIZ	Deputy Clerk
J. WYATT	Repoter

9:00 am BC059833
SAY & SAY vs. ANDREW CASTELLANO
RELATED TO BC041515
Plaintiff Counsel: JAMES ANDION (X)
RICHARD HOPKINS (X)
Defendant Counsel: GARY HOLLINGSWORTH (X)
ANDREW CASTELLANO
JOHN HENDRY (X)

NATURE OF PROCEEDINGS:

MOTION OF DEFENDANT, IVY YUEN PURSUANT TO CCP SECTION 391.1 FOR AN ORDER REQUIRING PLAINTIFFS TO FURNISH SECURITY AS A VEXATIOUS LITIGANT, AND FOR A PRE-FILING ORDER PURSUANT TO CCP SECTION 391.7;

Motion is granted.

Defendant Household Bank's motion for an order requiring vexatious litigant to post security is set for May 24, 1993, at 9:00 a.m., in this department.

Court orders that L. Shieh appear in this court on May 24, 1993, at 9:00 a.m.

Counsel, Gary Hollingsworth, is to give notice.

MINUTES ENTERED
04/22/93
COUNTY CLERK

PAGE 1 DEPT. 14

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 04/22/93	DEPT. 14
HONORABLE EDWARD KAKITA	JUDGE
V. GALLUCCI	Deputy Sheriff
J. BESINAIZ	Deputy Clerk
J. WYATT	Reporter

9:00 am BC054981
L. Shieh vs. Warren Christopher, et al
RELATED TO BC041515
RECUSED: PAUL BOLAND
Plaintiff Counsel: RICHARD HOPKINS (X)
Defendant Counsel: WILLIAM HIGHBERGER(x)
RICHARD TARLOW (X)

NATURE OF PROCEEDINGS:

MOTION OF DEFENDANTS TO QUASH NOTICE OF DEPOSITION AND FOR A PROTECTIVE ORDER AND REQUEST FOR SANCTIONS;

MOTION OF PLAINTIFF, L. SHIEH TO COMPEL DEPOSITION, TO STAY DEFENDANT'S DISCOVERY UNTIL THE COMPLETION OF

PLAINTIFF'S DISCOVERY, FOR SANCTIONS;

Motion to quash is granted. Motion to compel is denied. Requests for sanctions are continued to June 3, 1993, at 9:00., in this department.

Court orders that L. Shieh appear in this court on May 24, 1993, at 9:00 a.m.

Counsel, William Highberger, is to give notice to both plaintiffs attorneys of record.

MINUTES ENTERED
04/22/93
COUNTY CLERK

NAME ADDRESS AND TELEPHONE
NUMBER OF ATTORNEY(S):

Lucien A. Schmit III
Law Office of Lucien Schmit
301 N. Lake Ave., Suite 720
Pasadena, CA 91101
(818)405-0344

ATTORNEY(S) FOR:

Plaintiff L. Shieh

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES

CASE NUMBER

L. Shieh — BC054981

PLAINTIFF(S)

vs

Warren Christopher, et al.

DEFENDANT(S)

SUBSTITUTION OF ATTORNEY

(Plaintiff .Defendant .Cross-Complaint
.Cross-Defendant- .Petitioner

.Respondent)

L. Shieh hereby substitutes
Lucien A. Schmit
(address) 301 N. Lake Ave., Suite 720, Pasadena, CA 91101
(phone number) (818)405-0344 as attorney(s) of record in place and stead of Liang-Houh Shieh

Dated: October 20, 1992

Liang-Houh Shieh

(Signature of Party)

I consent to the above substitution

Dated: October 20, 1992

Liang-Houh Shieh

(Signature of Present Attorney)

Above substitution accepted

Dated: October 27, 1992

Lucien Schmit III

PROOF OF SERVICE

STATE OF CALIFORNIA,
COUNTY OF LOS ANGELES

I am in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my address is: 301 North Lake Avenue, 7th Floor, Pasadena, CA 91101. On October 27, 1992, I served the foregoing document described as "Substitution of Attorney" on all interested parties in this action.

( ) by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:
(X) by placing ( ) the original (X) a true copy thereof enclosed in sealed envelopes addressed as follows:

William Highberger, Esq.
Gibson, Dunn & Crutcher
333 S. Grand Ave.
Los Angeles, CA. 90071

Richard G. Tarlow, Esq.
Law Offices of Richard G. Tarlow
23632 Calabasas Road
Calabasas, CA. 91030

(X) BY MAIL

( ) I deposited such envelope in the mail at Pasadena, California. The envelope was mailed with postage thereon fully prepaid.

(X) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it

would be deposited with U. S. postal service on that same day with postage thereon fully prepaid at Pasadena, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit. Executed on October 2, 1992, at Pasadena, California.

( ) BY PERSONAL SERVICE I delivered such enveloped by hand to the offices of the addressee. Executed on _____, at Pasadena, California.

(X) (State) I declare under penalty of perjury under the laws of the State of California that the above is

true and correct.

( ) (Federal) I declare that i am employed in the office of a member of the bar of this court at whose direction the service was made.

Debbie Lin	Debbie Lin
Type or Print Name	Signature

NAME ADDRESS AND TELEPHONE
NUMBER OF ATTORNEY(S):

Lucien A. Schmit III
Law Office of Lucien Schmit
301 N. Lake Ave., Suite 720
Pasadena, CA 91101
(818)405-0344

ATTORNEY(S) FOR:

Plaintiff L. Shieh

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES

	CASE NUMBER
L. Shieh	BC059833
PLAINTIFF(S)	
vs	
Andrew Castellano, et al.	
DEFENDANT(S)	

SUBSTITUTION OF ATTORNEY

(Plaintiff .Defendant .Cross-Complaint
.Cross-Defendant- .Petitioner

.Respondent)

L. Shieh hereby substitutes
Lucien A. Schmit
(address) 301 N. Lake Ave., Suite 720, Pasadena, CA 91101
(phone number) (818)405-0344 as attorney(s) of record in place and stead of Liang-Houh Shieh

Dated: October 20, 1992

Liang-Houh Shieh

_____

(Signature of Party)

I consent to the above substitution

Dated: October 20, 1992

Liang-Houh Shieh

_____

(Signature of Present Attorney)

Above substitution accepted

Dated: October 27, 1992

Lucien Schmit III

_____

PROOF OF SERVICE

STATE OF CALIFORNIA,
COUNTY OF LOS ANGELES

I am in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my address is: 301 North Lake Avenue, 7th Floor, Pasadena, CA 91101. On October 27, 1992, I served the foregoing document described as "Substitution of Attorney" on all interested parties in this action.

( ) by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:
(X) by placing ( ) the original (X) a true copy thereof enclosed in sealed envelopes addressed as follows:

William Highberger, Esq.
Gibson, Dunn & Crutcher
333 S. Grand Ave.
Los Angeles, CA. 90071

Richard G. Tarlow, Esq.
Law Offices of Richard G. Tarlow
23632 Calabasas Road
Calabasas, CA. 91030

(X) BY MAIL

( ) I deposited such envelope in the mail at Pasadena, California. The envelope was mailed with postage thereon fully prepaid.

(X) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it

would be deposited with U. S. postal service on that same day with postage thereon fully prepaid at Pasadena, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit. Executed on October 2, 1992, at Pasadena, California.

( ) BY PERSONAL SERVICE I delivered such enveloped by hand to the offices of the addressee. Executed on _____, at Pasadena, California.

(X) (State) I declare under penalty of perjury under the laws of the State of California that the above is

true and correct.

( ) (Federal) I declare that i am employed in the office of a member of the bar of this court at whose direction the service was made.

Debbie Lin	Debbie Lin
Type or Print Name	Signature

James L. Andion
LAW OFFICE OF JAMES L. ANDION
301 N. Lake Avenue, Suite 720D
Pasadena, CA. 91101
(818)405-0344

Attorney for Plaintifs,
L. Shieh and Say & Say

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

L. SHIEH, and SAY & SAY, Plaintiffs, vs. WARREN CHRISTOPHER, et al., Defendants,	CASE NO. BC 054981
	NOTICE OF MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT; POINTS AND AUTHORITIES AND DECLARATION OF JAMES L. ANDION IN SUPPORT
	DATE: May 24, 1993

) TIME: 9:00 am
) DEPT: 14
) [tentative]
) Discovery
) Cutoff: None
) Motion
) Cutoff: None
) Trial Date:
) None

TO EACH PARTY AND ATTORNEY OF RECORD IN THIS ACTION:

PLEASE TAKE NOTICE THAT on May 24, 1993, at 9:00 a.m., or as soon thereafter as counsel can be heard, Plaintiffs, Say & Say and L. Shieh will move this Court, in Department 14 (tentatively) at the Los Angeles County Superior Court, 111 North Hill Street, Los Angeles, CA 90012, for an order permitting Plaintiffs to file a second amended complaint, which is lodged herewith. This Motion will be made upon the ground that it is in furtherance of justice to allow the filing of such amended

complaint, and will be based upon this notice, the attached points and authorities, the attached Declaration of James L. Andion, and on such oral and documentary evidence as may be presented at the hearing, and the complete files and records in this action.

Dated: April 27, 1993

James L. Andion

_____

James L. Andion
Attorney for Plaintiffs

MEMORANDUM OF POINTS AND AUTHORITIES

I. Procedural Background

Plaintiff Shieh's attorney of record filed the First Amended Complaint on or about July 16, 1992, alleging causes of action for unfair competition (Lanham Act), violation of labor code §1050, et seq., defamation, invasion of privacy, interference with prospective economic advantage, unfair competition, (B & P Code §17200), legal malpractice, breach of fiduciary duty, conversion, breach of contract, and inducing to breach a contract, etc. Shortly thereafter, defendants launched a full scale campaign to try to stay the whole action on the basis of CCP §391. During the course of responding to the defendants' charges, plaintiffs' current

counsel reviewed the facts of this Action. Plaintiffs' current counsel determined that the facts are strongly supporting the necessity of adding a plaintiff and several new causes of action against the defendants. Therefore, it is necessary for plaintiffs to seek leave to amend the complaint.

The proposed complaint is completely rewritten. Among other things, the proposed second amended complaint adds Say & Say, a California corporation, as a new plaintiff, and adds new causes of action for conspiracy to violate Business & Professions Code §6128, abuse of process, conspiracy to interfere with economic relations, intentional interference with economic

relations, conversion, intentional infliction of emotional distress, negligent infliction of emotional distress, false description of service, violation of the Uniform Trade Secrets Act, deceit and collusion, manupulation of judicial system, inducing judges and judicial personnel to breach their judicial duty, and interference with partnership opportunity.

II. The Court Has Jurisdiction To Allow Filing of An Amended Complaint

Code of Civil Procedure grants the Court discretion to allow amendment of any pleading in the furtherance of justice. It is judicial policy to decide disputes between the parties on their merits, and to allow amendment of the pleadings to put all sources of

dispute at-issue at the time of trial. Nestle v. Santa Monica, 6 Cal. 3d 920, 939 (1972).

"'While a motion to permit an amendment to a pleading to be filed is one addressed to the discretion of the court, the exercise of this discretion must be sound and reasonable and not arbitrary or capricious. [Citations omitted.] And it is a rare case in which "a court will be justified in refusing a party leave to amend his pleadings so that he may properly present his case." [Citation omitted.] If the motion to amend is timely made and the granting of the motion will not prejudice the opposing party, it is error to refuse permission to amend and where refusal also results in a party

being deprived of the right to assert a meritorious cause of action..., it is not only error but an abuse of discretion. [Citation omitted.]'" (California Casualty General Insurance Company v. Superior Court, (1985) 173 Cal. App. 3d 274, 278).

III. The Court Should Exercise Its Discretion to Allow Filing of This Second Amended Complaint

This motion was timely made, as fully detailed in the attached Declaration of James L. Andion. Plaintiffs' present counsel reviewed the case and the applicable law and then filed this motion. Moreover, there is no conceivable prejudice to the defendants since they have not answered the First Amended Complaint. Approximately 99% of the defendants have not even entered a general appearance in

this action. No discovery has been performed, and there is no trial date. The status of this action is still in the earliest stage. There is absolutely no prejudice to defendants.

The Second Amended Complaint proposes that plaintiffs have a reasonable probability to succeed on all causes of action. All plaintiffs need is to prove that they have a reasonable probability to succeed on at least one cause of actions in order to prevail over defendants. For the interest of justice, the Second Amended Complaint should be filed.

IV. Conclusion

For the reasons stated above, plaintiffs respectfully request that this

Court enter an order allowing them to file the proposed Second Amended Complaint.

Respectfully submitted,

April 27, 1993

James L. Andion

James L. Andion
Attorney for Plaintiffs

DECLARATION OF JAMES L. ANDION IN SUPPORT OF MOTION FOR LEAVE . FILE SECOND AMENDED COMPLAINT

I, James L. Andion, declare:

1. The facts stated herein are true of my own first hand personal knowledge and if called as a witness, I could, and would testify thereto under oath.

2. I have reviewed the relevant documents concerning this motion in this Action.

3. Plaintiffs' attorney of record filed the First Amended Complaint on or about July 16, 1992, which superseded the original complaint, alleging causes of action for interfering with contractual relations, breach of

contract, conversion, breach of covenant of good faith and fair dealing, negligence, defamation, wrongful acts and omissions, and unjust enrichment. Shortly thereafter, defendants launched a full scale campaign to try to stay the whole action on the basis of CCP §391. Plaintiffs' counsel have reviewed the facts, studied the files propounded by the defendants, and determined that the facts and files support the necessity of adding a plaintiff and several new causes of action against the defendants. Therefore, it is necessary for plaintiffs to seek leave to amend the complaint.

4. The proposed second amended complaint is sompletely rewritten. The purpose is to add a new plaintiff and to

add new causes of action.

5. No discovery cut-off, motion cut-off, or trial date had been set.

I declare under the penalty of perjury under the laws of the State of California on the foregoing is true and correct.

Dated: April 27, 1993

James L. Andion

PROOF OF SERVICE

STATE OF CALIFORNIA,
COUNTY OF LOS ANGELES

I am in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my address is: 301 North Lake Avenue, 7th Floor, Pasadena, CA 91101. On September 23, 1993, I served the foregoing document described as "Petition for Certiorari" on all interested parties in this action.

( ) by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:
(X) by placing ( ) the original (X) a true copy thereof enclosed in sealed envelopes addressed as follows:

Clerk of California Supreme Court
300 South Spring Street
Second Floor
Los Angeles, CA. 90013

(X) BY MAIL

( ) I deposited such envelope in the mail at Pasadena, California. The envelope was mailed with postage thereon fully prepaid.

(X) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U. S. postal service on that same day with postage thereon fully prepaid at Pasadena, California in the ordinary course of business. I am aware that on motion of

the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit. Executed on September 23, 1993, at Pasadena, California.

( ) BY PERSONAL SERVICE I delivered such enveloped by hand to the offices of the addressee. Executed on _____, at Pasadena, California.

( ) (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(X) (Federal) I declare that i am employed in the office of a member of the bar of this court at whose direction

the service was made.

T. Pan
Type or Print Name

Signature